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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/164,580	10/01/1998	RICHARD W. ARNOLD	TI-22561	6836

23494 7590 06/21/2002

TEXAS INSTRUMENTS INCORPORATED
P O BOX 655474, M/S 3999
DALLAS, TX 75265

EXAMINER

MITCHELL, JAMES M

ART UNIT	PAPER NUMBER
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2827

DATE MAILED: 06/21/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/164,580

Applicant(s)

ARNOLD ET AL.

Examiner

James Mitchell

Art Unit

2827

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 30 April 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☒ they raise the issue of new matter (see Note below);
- (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☒ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See attached Office Action.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: _____

Claim(s) withdrawn from consideration: _____

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☒ Other: See attached Office Action

Continuation of 2. NOTE: All of the amendments raise new issues that would have been thoroughly considered in order to determine if the amendments constitute new matter, and all of the amendments would otherwise require undue further consideration and/or search.

Continuation of 5. does NOT place the application in condition for allowance because: The request for reconsideration is directed to the unentered amendment, and on cursory consideration, the request for reconsideration does not otherwise appear to overcome the rejections

DETAILED ACTION

1. This office action is in response to the amendment filed April 30, 2002.

Declaration

2. The applicant has tried to antedate the prior art reference by providing a declaration under 37 CFR 1.131, but it can not disqualify a 102(e) reference when the claims are directed to the same invention. The record clearly shows that applicant's invention is directed to the same art.

3. If treated as an affidavit to provoke an interference then it is inadequate, because it lacks corroborating evidence and affidavits to support the assertion that the claimed invention was made prior to May 19, 1997. Pursuant to 37 CFR 1.608 (b) When the effective filing date of an application is more than three months after the effective filing date of a patent, the applicant **before an interference will be declared**, shall file evidence which may consist of patents or printed publications, other documents, and one or more affidavits which demonstrate that applicant is prima facie entitled to a judgment relative to the patentee and an explanation stating with particularity the basis upon which the applicant is prima facie entitled to a judgment relative the patentee, **and** an explanation stating with particularity the basis upon which applicant is prima facie entitled to the judgement.

Interference

4. Applicant has failed to satisfy requirements set forth in 37 C.F.R 1.607.

Even if all elements pursuant to section 607 to invoke an interference were met, applicant has not properly replied to the last office action, since there are outstanding rejections that have yet to be addressed. 37 C.F.R 2307.01.

Amendment

5. Pursuant to 37 C.F.R 2307.03, the amendment of claim 30 has been properly denied, because prosecution is closed.

Response to Arguments

6. Pertaining to applicant contention that the Declaration be treated as a 1.131, the Declaration is treated under 37. CF.R 1.131, however it does not overcome the prior art reference because it is drawn to same subject matter as set forth in 1.131.

7. In regards to applicant's claim that the examiner provoke an interference, the interference can not be provoked, because applicant hasn't established that it is prima facie entitled to judgment as set forth in paragraph 3 of this office action.

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Mitchell whose telephone number is (703) 305-0244. The examiner can normally be reached on M-F 10:30-8:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David L. Talbott can be reached on (703) 305-9883. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3432 for regular communications and (703) 305-3230 for After Final communications.

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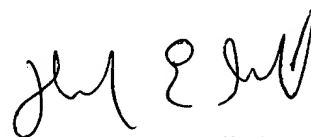
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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.



jmm

June 6, 2002



DAVID E. GRAYBILL
PRIMARY EXAMINER